

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LINDA DOWNS,

VS.

RIVER CITY GROUP, LLC, et al.,

## I. BACKGROUND

In response to Defendant's Request for Expedited Briefing, and good cause appearing, the court stated that it would conduct a status conference on Wells Fargo's motions (Docs. # 197 and # 198) on May 16, 2013, at 10:30 a.m. The deadline for filing responses to Plaintiff's motions to compel (Docs. # 188 and # 191) was stayed until after completion of the status conference at which time new deadlines, if necessary, would be established. Plaintiff was directed to file a response to Defendants' motions for

1 stay of Plaintiff's discovery motions on or before May 15, 2013, which Plaintiff did in Doc. # 201.  
2 Counsel submitted an affidavit in support of his clients' oppositions to the motion to stay. (Doc. # 202).  
3 The Court conducted a hearing and received arguments of counsel at a status conference on May 16,  
4 2013. Present for Plaintiff was her attorney Adam McMillen, Esq. Present for Defendant Wells Fargo  
5 was its attorney Ariel Stern, Esq. Counsel for Minnesota Life, Todd Erb, Esq., participated by telephone.

## 6 **II. ANALYSIS**

7 The court noted that Plaintiff's motion to compel against Minnesota Life was filed on April 25,  
8 2013, and that Plaintiff's motion against Wells Fargo was filed on April 29, 2013 (Docs. # 188 and  
9 # 191). However, the discovery deadline in this case expired on February 8, 2013. (Doc. 82.) Perhaps  
10 more importantly, it is noted that all parties, Plaintiff included, filed motions for summary judgment in  
11 this case: (Plaintiff, Doc. # 157, actually a motion for partial summary judgment, 3/11/13; Defendant  
12 Minnesota Life, Doc. # 155, 3/8/13; Defendant Wells Fargo, Doc. # 154, 3/8/13). Briefing on these  
13 motions was completed on April 11, 2013. No party, most importantly the Plaintiff, asserted that  
14 resolution of the motions should be delayed under Fed. R. Civ. P. 56(d) until after additional discovery  
15 indispensable to the case and important to the motions for summary judgment was completed. While this  
16 Rule might not have afforded any assistance to Plaintiff on her partial motion for summary judgment  
17 because 56(d) only provides relief to a non-movant, if Plaintiff thought this discovery was relevant to  
18 the issues presented by the motions of the Defendants, Plaintiff could have made an argument to the  
19 court which would have delayed consideration of the motions:

20 **Rule 56(d)** provides in pertinent part as follows:

21 If a nonmovant shows by affidavit or declaration that, for specific  
22 reasons, it cannot present facts essential to justify its opposition, the court  
23 may  
24 (1) defer considering the motion, or deny it;  
25 (2) allow time to obtain affidavits or declarations or to take discovery; or  
26 (3) issue any other appropriate order.

27 In this matter, the Plaintiff in opposing the Defendants' motions did not avail herself of this  
28 provision of Rule 56. Thus, the court fails to understand how the discovery Plaintiff wants to now

1 compel from Defendants can have any real relevancy to this case if this discovery was so unimportant  
2 that Plaintiff did not feel a need for it to be used in opposing the motions for summary judgment.

3 In footnote 1 to Plaintiff's response (Doc. # 201 at 2), Plaintiff states that while she believes the  
4 facts provided in her opposition to Defendants' motion were sufficient to show material facts are in  
5 dispute such that summary judgment should be denied, Plaintiff also stated that she would "supplement  
6 her oppositions according to the information received in response to the pending motion to compel...".  
7 The court would assume that if the information sought in these motions to compel had any substantive  
8 validity, the Plaintiff would have sought the 56(d) extension to supplement her oppositions, but she did  
9 not do so.

10 The court cannot discern the utility in the briefing by the parties and consideration by the court  
11 of a motion to compel which might become moot if District Judge Larry Hicks grants Defendants'  
12 motions. Plaintiff was unable to present any compelling argument to support her position that the court  
13 should still proceed to hear and possibly decide a motion to compel which may become totally irrelevant.

14 The case Plaintiff cites in support of her position, *O-Grady-Sullivan v State of Nevada*, 2:11-cv-  
15 00839-MMD-CWH, 2012 WL 3012434 (D. Nev. 2012), is inapposite. In that decision, Magistrate Judge  
16 Hoffman was considering Defendant's request for a stay of discovery while the district judge addressed  
17 the merits of Defendant's motion to dismiss predicated on immunity grounds. In that matter, the deadline  
18 for completion of discovery not been completed, nor had final motions for summary judgment been  
19 thereafter submitted to the court.

20 Defendants cite the general rule that absent "unusual circumstances," discovery motions should  
21 be filed *before* the deadline for completion of discovery expires. *Gault v Nabisco Biscuit Co.*, 184 F.R.D.  
22 620, 622 (D. Nev. 1999). Although not denying Plaintiff's motions to compel, based on the arguments  
23 and memoranda before the court at this time, the court does not find any "unusual circumstances" in the  
24 present case which might justify consideration of a motion to compel at this stage.

25 Similarly in the *Gault* case, in denying the untimely motion to compel, Judge Johnston also noted  
26 that the movant in that case, in opposing a motion for summary judgment, did not seek the court to delay  
27 consideration of the motion while Plaintiff completed discovery, citing Rule 56(f) (now 56(d)). As  
28 herein, the plaintiff in *Gault* represented to the court that "he was able to fully and substantively oppose

1 Nabisco's motion for summary judgment without resorting to Rule 56(f)." 184 F.R.D. at 622. This is  
2 what Plaintiff stated relative to her opposition to Defendants' motions for summary judgment. (Doc.  
3 # 201 at 2; n.1.)

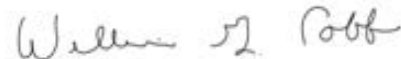
4 The court is *not*, however, as counsel for Wells Fargo requested, denying and/or striking  
5 Plaintiff's motions to compel in their entirety; it is just that the court believes that consideration of a  
6 motion to compel filed after the deadline for completion of discovery while dispositive motions are  
7 pending runs counter to principles of judicial economy. If Judge Hicks grants Defendants' motions for  
8 summary judgment as to either or both parties, as noted above, obviously the motion to compel as to that  
9 party becomes moot. If, on the other hand, Judge Hicks denies Defendants' motions, the court will direct  
10 the parties to complete briefing on the merits of Plaintiff's motions to compel, to include, however, a  
11 discussion of whether Plaintiff's motions were timely filed.

### 12 **III. CONCLUSION**

13 The motion for stay of discovery of Defendant Wells Fargo (Doc. # 198), as joined in by  
14 Defendant Minnesota Life (Doc. # 200), is **GRANTED**. If the motions for summary judgment filed by  
15 Defendants are denied, then such Defendant will have **twenty-one (21) days** thereafter to submit a  
16 response to Plaintiff's motions to compel (Docs. # 188 and # 191). If under this order a responsive  
17 memorandum is required, prior to filing a memorandum the parties shall first "meet and confer" to  
18 attempt to resolve any lingering and outstanding discovery dispute(s).

19  
20 **IT IS SO ORDERED.**

21 DATED: May 21, 2013.

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24 **WILLIAM G. COBB**  
25 UNITED STATES MAGISTRATE JUDGE  
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